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11 United States of America

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,) Case No.: 13CR2295-AJB
15 Plaintiff,)
16 vs.) **The United States' Notice of
17 RICARDO LOPEZ-MUNGUIA,) Motion and Motion For
18 aka Gustavo Madrigal,) Protective Order Regarding
19 Defendant.) Discovery and Grand Jury
20) Material
21)
22)
23)
24)
25)
26)
27)
28) Honorable Anthony J. Battaglia**

17 **To: Bridget Kennedy, Federal Defenders of San Diego, Inc.**

18 **PLEASE TAKE NOTICE** that on July 26, 2013, at 1:30 p.m., or
19 as soon thereafter as counsel may be heard, the plaintiff,
20 UNITED STATES OF AMERICA, by and through its counsel, Laura E.
21 Duffy, United States Attorney, and David P. Finn, Special
22 Assistant U.S. Attorney, will ask for a protective order
23 regarding discovery in the above captioned case.

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MOTION

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Laura E. Duffy, United States Attorney, and David P. Finn, Special Assistant United States Attorney, hereby moves this Court for an order granting the following motion for:

1. Protective Order Regarding Discovery and Grand Jury Material

The motion noted above is based on the files and records of this case, including the Indictment, together with the attached memorandum of points and authorities.

DATED: July 24, 2013

Respectfully submitted,

LAURA E. DUFFY
United States Attorney

S/David P. Finn
David P. Finn
Special Assistant
U.S. Attorney

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2 United States Attorney
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12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,) Case No.: 13CR2295-AJB
15 Plaintiff,)
16 vs.) **Memorandum of Points and
17 RICARDO LOPEZ-MUNGUIA,) Authorities in Support of The
18 aka Gustavo Madrigal,) United States' Motion For
19 Defendant.) Protective Order Regarding
20) Discovery and Grand Jury
21) Material
22)
23) Date: July 26, 2013
24) Time: 1:30 p.m.
25)
26)
27) Honorable Anthony J. Battaglia**

28 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and
1 through its counsel, Laura E. Duffy, United States Attorney,
2 David P. Finn, Special Assistant U.S. Attorney, and hereby
3 moves the Court for a protective order to safeguard discovery
4 in the above-captioned case against defendant Ricardo Lopez-
5 Munguia, aka Gustavo Madrigal. This motion is based upon the
6 files and records of this case and the argument set forth
7 below.

8 The United States respectfully requests that the Court
9 enter the proposed order granting its motion in order to
10 safeguard discovery that will be produced to defense counsel.

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MEMORANDUM OF POINTS AND AUTHORITIES

This Court has the power to issue "protective and modifying orders" regulating discovery and grand jury material. See Fed. R. Crim. P. 16(d)(1). Specifically, "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. Id.; see also Alderman v. United States, 394 U.S. 165, 185 (1969) ("the trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against unwarranted disclosure of materials which they may be entitled to inspect"); United States v. Oaks, 508 F.2d 1403, 1405 (9th Cir. 1974) (court issued a protective order due to its concern of the disclosure of confidential information that appeared on the tax returns).

Here, Defendant has been charged with harboring illegal aliens for financial gain and aggravated identity theft that involved using both real and fictitious identities (including names, dates of birth, Social Security numbers, etc.) on fraudulent employment documents. The Defendant worked as a senior manager for a janitorial company named Servi-Tek, Inc. The discovery material contains personal identification information of current and additional possible victims of identity theft, including current and former Servi-Tek employees. This personal identification information was used by Defendant to commit the alleged criminal acts. In addition, the discovery contains business records belonging to Servi-Tek, Inc. that deal with that company's business practices, contracts with customers, and other business-sensitive materials. These business records may impact the business of

1 Servi-Tek if they were disclosed to the public, including its
2 business competitors. As such, the disclosure of discovery
3 should be limited to only those individuals who are personally
4 and directly involved in preparing the defense and trial of
5 this criminal case and for no other purpose. This personal
6 identification information and other sensitive business records
7 should not be shared with third parties outside of the defense
8 team. Consequently, the United States moves for a protective
9 order to safeguard the discovery material from disclosure.

10 Therefore, in order to balance the needs and rights of the
11 Defendant with the United States' concerns and the privacy and
12 safety concerns of third parties, the United States
13 respectfully requests that the Court enter the concurrently
14 submitted protective order.

15 The protective order should:

16 1. Prohibit the members of the defense team from
17 distributing, disseminating, disclosing, or exhibiting
18 discovery and grand jury material to any person who is not part
19 of the defense team and for any purpose other than preparing a
20 defense of this case;

21 2. Require that the defense team take all reasonable
22 steps to (1) maintain the confidentiality of the discovery and
23 grand jury material, and (2) safeguard the discovery and grand
24 jury material produced in this case from inadvertent disclosure
25 or review by any third party;

26 3. Require each counsel of record to ensure that every
27 member of his/her defense team is advised of the protective
28 order and has agreed to be bound by its terms;

4. Require that if, in the course of preparing the
defense in this case, counsel of record or any member of
his/her defense team needs to disclose discovery and grand jury

1 material to any person outside of his/her defense team (such as
2 to a third-party witness), counsel of record must obtain prior
3 written authorization from the Court, with such authorization
4 to require that any such person to whom discovery and grand
5 jury material is disclosed agree to be bound by the terms of
6 the protective order, that discovery and grand jury material be
7 only shown to, and not left with, such person, and that the
8 discovery and grand jury material remain in the custody and
control of the defense team;

9 5. To the extent that any of the discovery and grand
10 jury material contains any individual's personal identification
11 information, within the meaning of General Order No. 514,
12 require that any filings with the Court referencing or
13 containing said discovery and grand jury material, or any
14 disclosure of said discovery and grand jury material to
15 witnesses must be redacted in a manner consistent with General
Order No. 514;

16 6. Require that no member of the defense team, including
17 the defense attorney, reveal to Defendants any personal
18 identification information, within the meaning of General Order
19 No. 514, that is contained in the discovery and grand jury
20 material produced by the United States related to any victim or
21 witness of Defendant's alleged fraud, as described in the
22 Indictment or any other charging document, unless the Court
23 orders that the defendant may review the personal
identification information;

24 7. Require defense counsel to return any discovery and
25 grand jury material produced pursuant to the protective order
26 to the United States within ten (10) days should defense
27 counsel withdraw or become disqualified from participation in
28 this case;

8. Require that nothing in the protective order shall be construed as enlarging the United States' discovery obligations or creating any right to material not otherwise discoverable, as determined by the United States or as directed by the Court; and

9. Require that the defense team return any and all copies of the discovery and grand jury material to the United States within ninety (90) days of the conclusion of the proceedings, including any appeal.

II

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court enter a protective order covering any and all discovery in this case.

DATED: July 24, 2013

Respectfully submitted,

LAURA E. DUFFY
United States Attorney

S/David P. Finn
David P. Finn
Special Assistant
U.S. Attorney

1 UNITED STATES OF AMERICA,) Case No.: 13CR2295-AJB
2 Plaintiff,)
3 vs.) **Certificate of Service**
4 RICARDO LOPEZ-MUNGIA,)
5 Defendant.)

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7 The United States Attorney charges:

8 IT IS HEREBY CERTIFIED THAT:

9 I, David P. Finn, am a citizen of the United States and am
10 at least eighteen years of age. My business address is 880
11 Front Street, Room 6293, San Diego, California 92101-8893.

12 I am not a party to the above-entitled action. I have
13 caused service of UNITED STATES' MOTION FOR A PROTECTIVE ORDER
14 on the following parties by electronically filing the foregoing
15 with the Clerk of the District Court using its ECF System, which
16 electronically notifies them.

17 1. Bridget Kennedy, Esq.

18 I declare under penalty of perjury that the foregoing is
19 true and correct.

20 Executed on July 24, 2013

21 s/ David P. Finn

22 DAVID P. FINN